IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3687 OF 2006

1.Santosh Dinkar Khekale, &
2.Dinkar Raojipant Khekale. ..Applicants.

Versus

1.Sharad Raojipant Khekale, &
2.State of Maharashtra. ..Respondents.

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Mr.Subodh Desai, Adv. i/b. Mr.Pankaj Thatte, Adv. for the Applicants.
Ms.Chandan Salgaoncar Radia, Adv. for Respondent No.1.
Mrs.A.S.Pai, APP, for Respondent No.2-State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : OCTOBER 23, 2007.

P.C.:

. Leave to amend. Amendment to be carried out forthwith.

2. Heard the learned Advocate for the Applicants, the learned Advocate for respondent No.1 and the learned APP for the State.

3. The present applicants are the original accused in Criminal Complaint Case No.280 of 1999 and applicant No.1 is the original complainant in

Criminal Complaint Case No.337 of 1999. Criminal Complaint Case No.280 of 1999 is pending before the learned 4th J.M.F.C., Pune and Criminal Complaint Case No.337 of 1999 is pending before the learned J.M.F.C., Nagpur. Criminal Complaint Case No.280 of 1999 is under Sections 406, 420 of IPC, whereas Criminal Complaint Case No.337 of 1999 is under Section 138 of the Negotiable Instruments Act.

4. The applicants have preferred the present application for transfer of the Criminal Complaint Case No.280 of 1999 which is pending before the learned 4th J.M.F.C. Pune to the Court of J.M.F.C. at Nagpur where the other case is pending. The case of the applicants is that cross-case i.e. Criminal Complaint Case No.280 of 1999 has been filed by respondent No.1 only as a counter blast to their complaint. Applicant No.1 has filed complaint under Section 138 of N.I. Act and only after the notice was received by respondent No.1 in the said matter, the cross-complaint under Sections 406 and 420 of IPC came to be filed. It is further stated that

applicant No.2 is over 72 years of age and is suffering from arthritis and various ailments.

5. As far as the ailments of applicant No.2 are concerned, the ailments are common, especially in old age. It is not disputed that applicant No.2 can travel with the aid of some support. As far as the merits of both the cases are concerned, the respective Courts will look into the merits of the said cases. In my view, no good ground is made for transfer of the said case. Application is rejected.

6. It is also prayed that applicant No.2 be granted exemption from personal appearance before the trial Court. The ground for exemption from personal appearance is that applicant no.2 is over 72 years of age and is suffering from various ailments. The learned Advocate for respondent No.1 fairly states that if applicant No.2 appears once before the trial Court, he may be granted exemption. In this view of the matter, on applicant No.2 appearing once before the trial Court, thereafter he be granted exemption from

personal appearance before the trial Court unless his appearance is absolutely essential in which case on notice being given, applicant No.2 shall appear before the trial Court on that date.

7. Application is disposed of accordingly.

(SMT.V.K.TAHILRAMANI,J.)